

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

KAISER ALUMINUM AND CHEMICAL
CORPORATION,

Appellant,

v.

State of Washington DEPARTMENT
OF ECOLOGY,

Respondent.

PCEB No. 89-146

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter involves Kaiser Aluminum and Chemical Corporation's ("Kaiser") alleged violation at its Mead facility of air pollution regulations.

A hearing was held on February 20, 1990 in Spokane. Present for the Pollution Control Hearings Board were, Chair Judith A. Bendor, Presiding, and Member Harold S. Zimmerman.

Appellant Kaiser was represented by Staff Environmental Engineer R. C. Jeltsch. Respondent Department of Ecology ("DOE") was represented by Assistant Attorney General Lucy E. Phillips. A court

1 reporter affiliated with Gene Barker and Associates recorded the
2 proceedings.

3 Testimony was heard and exhibits admitted and examined. Argument
4 was made. From the foregoing, the Board makes these:

5 FINDINGS OF FACT

6 I

7 Kaiser Aluminum operates a large aluminum plant near the town of
8 Mead, Washington.

9 On July 18, 1989 during an unannounced annual hazardous waste
10 inspection, a DOE inspector saw thick clouds of dust being released
11 into the air during the operation of a portable brick crusher. The
12 emissions were transient in nature, and there was no evidence they
13 traveled off-site.

14 Kaiser was using the machine to determine if fire brick could be
15 recycled.

16 II

17 The only method being used to quell dust was a person holding a
18 simple garden hose and spraying the bricks before they entered the
19 crusher. The only means used to disperse the water was by moving the
20 hose or applying thumb pressure.

21 Clearly the wetting procedure was inadequate. Simple alternate
22 reliable methods could have been used to prevent the dust emissions.
23 Alternatively, a more careful operation could have prevented the dust.
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

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III

The inspector informed Kaiser the day of the inspection that there was a problem and the operation was shut down for that day. The brick crusher was ultimately removed in October 1990.

IV

On September 28, 1989 DOE issued a \$1,000 penalty DE 89-1145 for violations of WAC 173-415-030(10) and -030(7). At the hearing, DOE only litigated the violation of WAC 173-415-030(10). Kaiser's application to DOE for relief from penalty was denied, and Kaiser filed an appeal which became our PCHB No. 89-146.

V

Kaiser is aware that there is a significant potential to have dust problems at its Mead facility. Kaiser has a recent history of air pollution violations, all of which were known to appellant before this July 18, 1989 incident:

August 1987	Particulate	\$7,750 penalty
October 1988	"	\$7,750 penalty
November 1988	Fugitive Emissions	Order
March 1989	Opacity	Notice of Violation

VI

Any Conclusion of Law which is deemed to be a Finding of Fact is hereby adopted as such.

From these Findings of Fact the Board enters these:

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 89-146

1 CONCLUSIONS OF LAW

2 I

3 The Pollution Control Hearings Board has jurisdiction over this
4 appeal. Chapt. 43.21B RCW.

5 II

6 Appellant is required at all times to maintain and operate the
7 facility in a manner consistent with good air pollution control
8 practice to the extent practicable. WAC 173-415-030(10).

9 Kaiser's release of dust constituted the release of fugitive
10 emissions. WAC 174-403-022; WAC 173-415-020.

11 We conclude that on July 18, 1989 Kaiser failed to operate its
12 facility in a manner consistent with good air pollution control
13 practice when it released these emissions of dust.
14 WAC 173-415-030(10).

15 III

16 According to DOE, ordinarily the maximum fine in such case is
17 \$1,000, RCW 70.94.431(1).

18 The reasonableness of the fine is dependent upon several factors,
19 including the magnitude of the violation, past history, and post
20 violation conduct before the Notice of Violation issues.

21 In this instance the violation was very short-lived and of local
22 impact. The operations ceased that day. However, appellant's recent
23 history demonstrates that Kaiser has not paid sufficient attention to
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26 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

27 PCHB No. 89-146

(4)

1 control of particulates, fugitive dust or opacity. Moreover, the
2 violation was due to obvious inadequacy in the wetting method.

3 In balancing these factors, we conclude that some reduction of
4 the penalty is merited.

5 IV

6 Any Finding of Fact which is deemed to be a Conclusion of Law is
7 hereby adopted as such.

8 From these Conclusions of Law the Board enters this:
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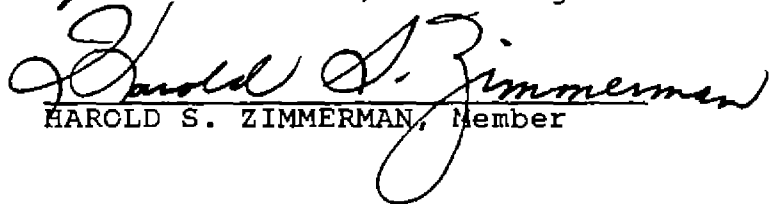
ORDER

The Penalty DE 89-1145 is AFFIRMED as to liability. The \$1,000 penalty is AFFIRMED, but \$250 is suspended provided that Kaiser does not violate air pollution laws relating to particulates, opacity or fugitive emissions for one year from the date of this Order.

DONE this 7th day of March, 1990.

POLLUTION CONTROL HEARINGS BOARD


JUDITH A. BENDOR, Presiding


HAROLD S. ZIMMERMAN, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

PCHB No. 89-146

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